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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,034	09/22/2003	James D. Ralph	F-295	1511

51640 7590 10/01/2007

SPINE MP  
LERNER, DAVID, et al.  
600 SOUTH AVENUE WEST  
WESTFIELD, NJ 07090

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 10/01/2007

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10667034	9/22/2003	RALPH ET AL.	F-295

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EXAMINER

Richard R. Shaffer

ART UNIT	PAPER
3733	20070919

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**Commissioner for Patents**

The amendment filed on July 16<sup>th</sup>, 2007 is deemed non-responsive for the reasons below.

Newly submitted claims 14-40 are directed to an invention that is independent or distinct from the invention originally claimed. Original canceled claims 1-13 were directed to a subcombination of an intervertebral spacer and newly submitted claims 14-40 are directed to a combination of a plurality of trial spaces. Inventions in this are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination claims recited more elements and were thus more specific. The subcombination has separate utility such as a toy. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 14-40 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Since no claims remain to be examined, the response filed on July 16<sup>th</sup>, 2007 is considered non-responsive.

Since the above-mentioned reply appears to be bona-fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction to avoid abandonment. EXTENSIONS OF TIME MAY BE GRANTED UNDER 37 CFR 1.136(a).

EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER

*Richard Shaffer*

Richard Shaffer  
September 19<sup>th</sup>, 2007